



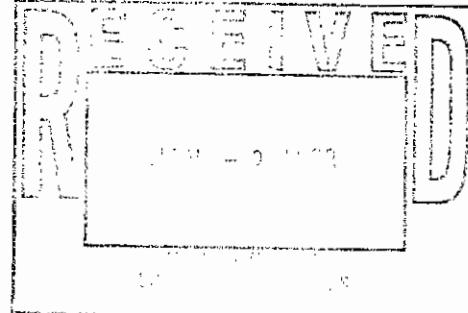
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Via Messenger

December 21, 2007

Judge Deborah A. Batts
United States District Court
United States Courthouse
500 Pearl Street, Room 2510
New York, New York 10007



Re: Bourne Co. v. Twentieth Century Fox Film Corporation, et al., 07 Civ. 8580 (DAB)

Dear Judge Batts:

This is in response to plaintiff's counsel's letter to Your Honor of this morning, opposing my request for a two week adjournment of the initial conference in this matter. I apologize to Your Honor for the amount of correspondence on a simple first request for a short adjournment of an initial conference.

Plaintiff's counsel has taken the opportunity in opposing a simple first request for a two week adjournment of an initial conference to (1) try to argue in favor of a discovery schedule they have proposed (under which the case would not be resolved until sometime in 2009), and (2) to accuse Fox or me of having been dilatory in this case. The first is inappropriate and irrelevant to the request regarding the adjournment of the initial conference, and the second is both inappropriate and untrue. What plaintiff's counsel has failed to do is explain in any way how plaintiff would be prejudiced by a two week adjournment of the initial conference.

Obviously the purpose of the initial conference will be to determine a discovery schedule for this matter. Suffice it to say that there is a substantial disagreement between the parties as to this schedule, with the defendants seeking a shorter schedule, and the plaintiff seeking a longer one. The fact that there is a substantive disagreement between the parties demonstrates why, as lead counsel for the defendants, I want to attend this initial conference.

Nor has Fox been dilatory in this litigation. The complaint was filed on October 3, 2007. After it was served on some of the defendants, I contacted the plaintiffs' counsel. They requested that I accept service on behalf of other of the defendants. After obtaining consent from these other defendants I agreed to do so as a courtesy (which seems has not exactly been reciprocated), and by agreement with the plaintiff's counsel, the answer was served 20 days after we accepted service for these other defendants. This was hardly delay. Nor have I refused to discuss a discovery schedule with plaintiff's counsel. The telephone call that plaintiff's counsel refers to occurred on November 30 when Mr. Fakler made an unscheduled telephone call to me. When I picked up the telephone, Mr. Fakler unilaterally announced that this was a Rule 26(f) conference. I told him that I was not prepared to discuss the schedule at that time (no initial conference with the Court had yet been scheduled), and that we should schedule a rule 26(f) conference at an

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appropriate time. After the scheduling of the initial conference, plaintiff's counsel made no effort to schedule a 26(f) conference.

The television episode that is the subject of this complaint was distributed in 2003, and has been in distribution since then. Under the discovery schedule that plaintiff intends to propose for this case, the case will not be resolved until well into 2009. Because the plaintiff cannot possibly suffer any prejudice by a two week adjournment of the initial conference, and because the lack of such an adjournment would be a substantial personal hardship to me, I respectfully request that this adjournment be granted. I also would appreciate it if I could be notified as soon as possible of Your Honor's decision, since my family and I need to make arrangements based on this decision. Thank you for your consideration of this request.

Respectfully submitted,

Jonathan Zavin
Partner

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cc: Ross Charap, Esq. (via e-mail and mail)

Rule 16 Conference re-scheduled for 1/18/08 at 11:30 AM
Rule 26(f) Conference to take place before 1/18/08.

SO ORDERED

DEBORAH A. BATT^{1/21/08}
UNITED STATES DISTRICT JUDGE

MEMO ENDORSED